



## THE GUARANTEE COMPANY OF NORTH AMERICA

("Insurer")

Suite 1400, 4950 Yonge Street, Toronto, ON, M2N 6K1

Toll Free: 1-800-268-6617

### Represented by Its Agent, WBI Home Warranty Ltd

#211, 9639 137A Street, Surrey, BC V3T 0M1

Phone: 604-639-2924 Toll free 1-855-639-2924 Fax: 604-639-2925

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#### Limited Home Warranty Insurance Policy

New Home in a Fee Simple Ownership

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<b>Insured Address:</b>	1436 Sandhurst Place, West Vancouver, BC, V7S 2P3
<b>Builder Name:</b>	Kensington Homes Ltd
<b>Builder Phone #:</b>	604-618-5618
<b>Builder Fax #:</b>	604-946-9963
<b>Warranty Policy Number:</b>	WHW120098-6

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**NOTICE TO THE OWNER:** Different components of your New Home are covered for specified periods of time; therefore refer to the entirety of this Policy for a description of the insurance coverage, conditions, limitations and exclusions. It is important to note the Expiry Dates below; each term begins on the Home Warranty Commencement Date. The Insurer will honor valid claims provided that the Owner has given prompt written notice in detail of any defects covered by this Policy prior to the applicable Expiry Date.

#### New Home Warranty Commencement Date

**Aug 24, 2020**

<b>1 Year</b> – Defects in Materials and Labour	Expires:	Aug 24, 2021	<b>12:01 a.m.</b>
<b>2 Years</b> – Building Systems, Exterior Cladding, Building Code	Expires:	Aug 24, 2022	<b>12:01 a.m.</b>
<b>5 Years</b> – Building Envelope	Expires:	Aug 24, 2025	<b>12:01 a.m.</b>
<b>10 Years</b> – Structural	Expires:	Aug 24, 2030	<b>12:01 a.m.</b>

Gordon Houston, Attorney-In-Fact  
Executive Vice President  
(authorized signatory as agent for The Guarantee)

In addition, please read the Maintenance Manual for a thorough understanding of the seasonal maintenance requirements for your New Home. Failure to follow these maintenance requirements may void warranty coverage should damage be caused or made worse by an Owner failing to comply. If you do not have a copy of our Maintenance Manual, a copy can be downloaded from the website at [www.wbihomewarranty.com](http://www.wbihomewarranty.com).



## **PART I: DEFINITIONS**

In this Policy, the terms below shall have the following meanings:

**“HPA”** means the Homeowner Protection Act.

**“Builder”** means the person/company named in this Warranty Policy.

**“Building Code”** means, as applicable:

- a) the British Columbia Building Code established under the Local Government Act, or
- b) the Vancouver Building Bylaw established under the Vancouver Charter,

in force at the time that the building permit was issued for the new home or, in jurisdictions where a building permit is not required, in force when construction commences.

**“Building Code Defect”** means an instance of non-compliance with the Building Code, if that non-compliance:

- a) constitutes an unreasonable health or safety risk; or
- b) has resulted in, or is likely to result in, material damage to the Home.

**“Building Envelope”** means the assemblies, components and materials of a new home which are intended to separate and protect the interior space of the new home from the adverse affects of exterior climatic conditions.

**“Building Envelope Defect”** means defects that result in the failure of the building envelope to perform its intended function

**“Building Inspector”** means the Authority having Jurisdiction as defined by the BC Building Code.

**“Building Systems”** means electrical, plumbing, heating ventilation, air conditioning etc.

**“Defect”** means any design or construction, that is contrary to the building code or that requires repair or replacement due to the negligence of a residential builder or person for whom the residential builder is responsible at law.

**“Designated Heritage Building”** means a building that is:

- a) A provincial heritage site within the meaning of the Heritage Conservation Act or included in the Provincial heritage register under that Act, or
- b) Protected through heritage designation or included in a heritage designation or included in a heritage register under the Local Government Act, the Vancouver Charter or the Islands Trust Act.

**“Home”** means a residential unit in a building constructed by the Builder, or deemed by the Warranty Provider to be so, and includes a dwelling unit as defined by the Homeowner Protection Act Regulations.

**“Insurer”** means The Guarantee Company of North America, as represented by its agent, WBI Home Warranty Ltd.

**“New Home Commencement Date”** means the date shown on the face of this policy for the commencement of the warranty on this home.

**“Owner”** means the person who owns the new home.

**“Policy”** means the documents provided to the Owner evidencing the Limited Home Warranty Insurance Policy and all forms, riders and endorsements pertaining or attached hereto.

**“Purchaser”** means the person or persons who purchased the new home from the Builder.

**“Required Retaining Wall”** means a retaining wall that is required by the Building Inspector to be engineered, or a retaining wall that is reasonably required for the direct support of, or to retain soil away from, a new home, a driveway, or a walkway.

**“Structural Defect”** means:

- a) a defect in the materials and labour that results in the failure of a load bearing part of the new home; and
- b) any defect which causes structural damage that materially and adversely affects the use of the new home for residential occupancy.

**“Warranty Provider”** means The Guarantee Company of North America, as represented by its agent, WBI Home Warranty Ltd.

If any terms are used in this Policy which are defined in the Homeowner Protection Act but not defined in this Policy, the meanings given to such terms in the Act will apply.



## **PART II: COVERAGE & CONDITIONS**

### **1. COVERAGE**

Beginning on the New Home Commencement Date, this Limited Home Warranty Insurance includes:

- a) in the first 12 months, any defect in materials and labour;
- b) in the first 24 months:
  - i) coverage for any defect in materials and labour supplied for the electrical, plumbing, heating, ventilation and air conditioning delivery and distribution systems,
  - ii) coverage for any defect in materials and labour supplied for the exterior cladding, caulking, windows and doors that may lead to detachment or material damage to the new home,
  - iii) coverage for any defect in materials and labour which renders the new home unfit to live in, and
  - iv) coverage for any violation in the building code;
- c) in the first five years, any Building Envelope Defect in the new home including a defect which permits unintended water penetration such that it causes, or is likely to cause, material damage to the new home.
- d) in the first ten years, any Structural Defects.

### **2. POLICY LIMITS**

(1) This Policy is limited in total, for all claims under home warranty insurance coverage applicable to the home, to:

- a) The original purchase price paid by the Purchaser, or
  - b) \$200,000.00
- whichever is less.

(2) When calculating the cost of claims in respect of the limits under this Policy, the Warranty Provider will include:

- a) the cost of repairs,
- b) the cost of any investigation, engineering and design required for the repairs, and
- c) the cost of supervision of repairs, including professional review but excluding legal costs.

### **3. COMPONENTS EXCLUDED FROM WARRANTY**

The following are excluded from this Policy:

- a) landscaping, both hard and soft, including plants, fencing, detached patios, planters, gazebos and similar structures;
- b) non-residential detached structures including sheds, garages, carports or outbuildings, or any structure or construction not attached to or forming an integral part of a home.
- c) any commercial use area and any construction associated with a commercial use area;
- d) roads, curbs and lanes;
- e) subject to Section 4 (m), site grading and surface drainage, unless on the Commencement Date the construction does not conform with the Building Code;
- f) the operation of municipal services, including sanitary and storm sewer;
- g) a septic tank or septic fields;
- h) the quality or quantity of water, either from a piped municipal water supply or from a well; and
- i) a water well; but excluding equipment installed for the operation of a water well used exclusively for a new home, which equipment is considered to be part of the plumbing system for the new home for the purposes of the home warranty insurance;
- j) In the case of a designated heritage building that is being converted from commercial to residential use, any component of the designated heritage building that has heritage value and does not conform with the BC Building Code.

The exclusions above do not include the following:

- a) a driveway or walkway;
- b) recreational and amenity facilities situated in, or included as the common property of, a new home if applicable;
- c) a retaining wall that
  - i. an authority having jurisdiction requires to be designed by a professional engineer, or
  - ii. is reasonably required for the direct support of, or retaining soil away from, a new home, driveway or walkway.



#### 4. DEFECTS OR CONDITIONS EXCLUDED FROM WARRANTY

The following are excluded from this Policy:

- a) weathering, normal wear and tear, deterioration or deflection consistent with normal industry standards;
- b) normal shrinkage of materials caused by drying after construction;
- c) any loss or damage which arises while a new home is being used primarily or substantially for non-residential purposes;
- d) materials, labour or design supplied by an Owner;
- e) any damage to the extent that it is caused or made worse by an Owner or third party (other than the Builder or its employees, agents or subcontractors), including:
  - i) negligent or improper maintenance or improper operation,
  - ii) failure to comply with the warranty requirements of the manufacturers of appliances, equipment or fixtures,
  - iii) alterations to the new home, including the conversion of non-living space into living space or the conversion of a dwelling unit into two or more units, unless the alterations were undertaken by the Builder under the sales contract, and
  - iv) changes to the grading of the ground;
- f) any damage to the extent that it is caused by the failure of an Owner to take timely action to prevent or minimize loss or damage, including the failure to give prompt notice to the Warranty Provider of a defect or discovered loss or a potential defect or loss;
- g) any damage caused by insects, rodents or other animals, unless the damage results from non-compliance with the Building Code by the Builder or its employees, agents or subcontractors;
- h) accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the Builder;
- i) bodily injury or damage to personal property or real property which is not part of the home;
- j) any defect in, or caused by, materials or work supplied by anyone other than the Builder or its employees, agents or subcontractors;
- k) changes, alterations or additions made to a new home by anyone after initial occupancy, except those performed by the Builder or its employees, agents or subcontractors as required under this Policy or under the construction contract or sales agreement for the new home, and any resultant damage;
- l) contaminated soil;
- m) subsidence of the land around a new home or along utility lines, other than subsidence beneath footings of a new home or under driveways or walkways;
- n) diminution in value of the new home; and
- o) bodily injury or damage to personal property caused by mold.

#### 5. DUTIES OF THE OWNERS

(1) As conditions of this warranty, the Owner must:

- a) properly maintain the home in keeping with whatever recommended maintenance requirements or procedures that were provided to the original Owner by the Warranty Provider or the Builder;
- b) not permit damage to the home to worsen from non-discovery of indications of a defect due to absence of the Owner, where indications of such a defect would normally have been noticeable by a reasonably prudent person occupying the home;
- c) mitigate any damage to a new home, even if the Owner does not occupy the home, by providing notice of the defect in writing to the Warranty Provider as soon as reasonably possible after discovering the defect, or after indications of water penetration or other defect first become evident, including such indications as:
  - i) water staining on interior surfaces,
  - ii) evident water penetration into wall cavities, ceiling or roof spaces, or other areas of the building, even if such does not appear to be causing damage,
  - iii) water or dampness in carpeting or other floor finishes,



- iv) mould growth or mildew in areas of the home where such might be caused by water penetration;
  - d) where a defect requires immediate attention to prevent or reduce damage to the home, take all reasonable steps to restrict damage;
  - e) grant the Warranty Provider or the Builder, or both, access to the home at all reasonable times to undertake inspection, investigation, monitoring or repair;
  - f) provide the Warranty Provider with all information and documentation that the Owner has available, as required to investigate a claim or to evaluate maintenance requirements or to undertake repairs.
- (2) To the extent that damage to a new home is caused or made worse by the failure of an Owner to take reasonable steps to mitigate, prevent, or reduce damage or loss as set out in Section 5 herein or under the HPA Regulations, or to provide access for inspection or repair, or to provide information and documentation required to investigate a claim or undertake repairs, such damage may, at the Warranty Provider's option, be excluded from home warranty insurance coverage.
- (3) The Owner's duty to mitigate damage to the building survives even if:
  - a) the new home is unoccupied; or
  - b) the new home is occupied by someone other than the Owner.

## **6. NOTICE OF DEFECTS**

- (1) Within a reasonable time after the discovery of a defect and before the expiry of the applicable home warranty insurance coverage under this Policy, the Owner must give written notice to:
  - a) the Builder; and
  - b) The Warranty Provider.
- (2) Written notice of a defect must be in reasonable detail, must set out any specific defects covered by home warranty insurance, and must include the home warranty insurance Policy number set out on the face of this Policy.
- (3) Notwithstanding 6(1), if the Owner has notified the Builder only of a defect before the expiry of the applicable home warranty insurance coverage, and the Owner is not satisfied with the Builder's repair or resolution of that defect, then the Owner must notify the Warranty Provider in writing prior to the applicable expiry date. Such notice must include copies of any relevant documentation and correspondence between the Owner and the Builder.
- (4) The Warranty Provider shall not provide warranty coverage for any defects of which the Warranty Provider was not notified pursuant to this Section, even if such defects would otherwise be covered by this Policy.

## **7. WARRANTY ON REPAIRS**

- (1) All repairs and replacements made under this Policy are warranted against defects in materials and labour until the later of:
  - b) the first anniversary of the date of completion of the repair or replacement; and
  - c) the expiry of the applicable new home warranty insurance coverage.
- (2) All repairs and replacements made under home warranty insurance must be completed in a reasonable manner using materials and labour conforming to the building code and industry standards.

## **8. LIVING-OUT ALLOWANCE**

- (1) If repairs are required under home warranty insurance and damage to the new home or the extent of the repairs renders the dwelling unit uninhabitable, the home warranty insurance must cover reasonable living-out expenses incurred by the Owner.
- (2) If a warranty provider establishes a maximum amount per day for claims for living-out expenses, the limit must be not less than \$100 per day for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel or other rental accommodation up to the day the dwelling unit is ready for occupancy, subject to the Owner receiving 24 hours advance notice.

## **9. SUBROGATED RIGHTS**

- (1) If the Warranty Provider makes a payment or assumes liability for any payment or repair under home warranty insurance,



- a) the Warranty Provider is subrogated to all rights of recovery of an Owner against any person or persons who may have caused or contributed to the requirement for the payment or repair under home warranty insurance,
  - b) the Warranty Provider may bring an action at its own expense, in the name of the Owner or of the Warranty Provider, to enforce such rights, and
  - c) the Owner must fully support and assist the Warranty Provider in the pursuit of those rights if the Warranty Provider pursues such subrogated rights;
- (2) Implied or expressed warranties or representations made by a residential builder to an Owner are not binding on the Warranty Provider except as set out in the Act and the regulation or as set out in the applicable home warranty insurance;
- (3) An Owner must permit the Warranty Provider or residential builder, or both, to enter the new home at all reasonable times, on the giving of reasonable notice to the Owner,
- a) to monitor the new home or its components,
  - b) to inspect for required maintenance,
  - c) to investigate complaints or claims, or
  - d) to undertake repairs under the home warranty insurance,
- and, if any reports are produced as a result of any of the activities referred to in subparagraphs (a) to (d), the reports must be provided to the Owner on request;
- (4) An Owner must provide to the Warranty Provider all information and documentation that the Owner has available, as reasonably required by the Warranty Provider, in order to investigate a claim or maintenance requirement, or to undertake repairs under the home warranty insurance;

### **PART III: MANDATORY WARRANTY CONDITIONS**

#### **10. MEDIATION**

- (1) In this section:
- "mediation"** means collaborative process in which 2 or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;
- "mediation session"** means a meeting between 2 or more parties to a dispute during which they are engaged in mediation;
- "mediator"** means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;
- "roster organization"** means any body designated by the Attorney General to select mediators for the purpose of the regulation.
- (2) If a dispute between a Warranty Provider and an Owner arising under home warranty insurance cannot be resolved by informal negotiation within a reasonable time, the Owner may, at the Owner's sole election, require that the dispute be referred to mediation by delivering to the Warranty Provider a written request to mediate.
- (3) If the Owner delivers a request to mediate under subsection (2), the Warranty Provider and the Owner must attend a mediation session in relation to the dispute.
- (4) In addition to the requirements of subsection (3), a Warranty Provider or an Owner may invite to participate in the mediation any other party to the dispute who may be liable.
- (5) Within 21 days after the Owner has delivered a request to mediate under subsection (2), the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.
- (6) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (5), the Owner may apply to a roster organization which must appoint a mediator taking into account
- a) the need for the mediator to be neutral and independent,
  - b) the qualifications of the mediator,
  - c) the mediator's fees,
  - d) the mediator's availability, and
  - e) any other consideration likely to result in the selection of an impartial, competent and effective mediator.
- (7) Promptly after a roster organization selects the mediator under subsection (6), the roster organization must notify the parties in writing of that selection.



- (8) The mediator selected by a roster organization is deemed to be appointed by the parties effective the date of the notice sent under subsection (7).
- (9) The date, time and place of the first mediation session must be scheduled by the mediator, and the first mediation session must occur within 21 days of the appointment of the mediator.
- (10) Despite subsection (3), a party may attend a mediation session by representative if
  - a) the party is under legal disability and the representative is that party's guardian ad litem,
  - b) the party is not an individual, or
  - c) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the mediation session.
- (11) A representative who attends a mediation session in the place of a party referred to in subsection (10)
  - a) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and
  - b) must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.
- (12) A party or a representative who attends the mediation session may be accompanied by counsel.
- (13) Any other person may attend a mediation session if that attendance is with the consent of all parties or their representatives.
- (14) At least 7 days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out
  - a) the facts on which the party intends to rely, and
  - b) the matters in dispute.
- (15) Promptly after receipt of all of the statements required to be delivered under subsection (14), the mediator must send each party's statement to each of the other parties.
- (16) Before the first mediation session, the parties must enter into a retainer with the mediator which must
  - a) disclose the cost of the mediation services, and
  - b) provide that the cost of the mediation will be paid
    - i) equally by the parties, or
    - ii) on any other specified basis agreed by the parties.
- (17) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair and cost-effective.
- (18) A person must not disclose, or be compelled to disclose, in any proceeding oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.
- (19) Nothing in subsection (18) precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.
- (20) A mediation session is concluded when
  - a) all issues are resolved,
  - b) the mediator determines that the process will not be productive and so advises the parties or their representatives, or
  - c) the mediation session is completed and there is no agreement to continue.
- (21) If the mediation resolves some but not all issues, then at the request of all parties the mediator may complete a report setting out any agreements that the parties to the mediation have made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:
  - a) facts;
  - b) issues;
  - c) future procedural steps.

## **11. TRANSFER OF WARRANTY TO SUBSEQUENT PURCHASERS**

- (1) Home warranty insurance pertains solely to the new home for which it provides coverage and no notice to the Warranty Provider is required on a change of ownership.
- (2) All of the applicable unused benefits under home warranty insurance are automatically transferred to any subsequent Owner on a change of ownership.



## **12. HANDLING OF CLAIMS**

- (1) A Warranty Provider must, on receipt of a claim under home warranty insurance, promptly make reasonable attempts to contact the Owner to arrange an evaluation of the claim.
- (2) The Warranty Provider must make all reasonable efforts to avoid delays in responding to a claim under home warranty insurance, evaluating the claim and scheduling any required repairs.
- (3) If, following evaluation of a claim under home warranty insurance, the Warranty Provider determines that the claim is not valid or not covered under the home warranty insurance, the Warranty Provider must notify the Owner of the decision in writing, setting out the reasons for the decision.
- (4) The notice under subsection (3) must also set out the rights of the parties under the third party dispute resolution process referred to in Section 1.
- (5) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labour.
- (6) On completion of any repairs, the Warranty Provider must deliver a copy of the repair specifications to the Owner along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in Section 7.

## **13. DISCLOSURE OF CLAIMS HISTORY**

- (1) On receipt of an inquiry from an Owner of a new home covered by home warranty insurance regarding the claims experience of that new home, a Warranty Provider must provide the Owner with a history of claims.
- (2) The history of claims referred to in subsection (1) must include, for each claim, not less than the following information for both the dwelling unit and, if applicable, the associated common property:
  - a) the type of claim that was made;
  - b) the resolution of the claim;
  - c) the type of repair performed;
  - d) the date of the repair;
  - e) the cost of the repair.
- (3) A Warranty Provider may charge an Owner a fee of up to \$25 to provide the history of claims.